

January 12, 2015

EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



Signed and Filed: January 12, 2015

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
METAWISE GROUP, INC. and DRACO) No. 14-31652DM
RESOURCES, INC.,) Chapter 11
Debtors.)
PROGRESSIVE ENVIRONMENTAL SERVICES,) Adversary Proceeding
INC.,) No. 14-3156DM
Plaintiff,)
v.)
METAWISE GROUP, INC.; DRACO)
RESOURCES, INC.; ARMCO METALS)
HOLDINGS, INC.; METAMINING, INC.;)
and SONGQIANG CHEN,)
Defendants.)

MEMORANDUM DECISION ON MOTIONS TO DISMISS CLAIMS
AGAINST CERTAIN DEFENDANTS

On November 13, 2014, debtors Metawise Group, Inc. (Case No. 14-31652) and Draco Resources, Inc. (Case No. 14-31654) filed their chapter 11 petitions in this court. Metawise owns 100% of the stock of Draco. Prior to the petition date, plaintiff Progressive Environmental Services, Inc. ("Plaintiff"), a judgment creditor of Metawise, filed this action asserting fraudulent

1 transfer, conspiracy and aiding and abetting in conspiracy to
2 defraud against both debtors and third parties Metamining, Inc.
3 ("Metamining"), Songqiang Chen ("Mr. Chen"), and Armco Metals
4 Holdings, Inc. ("Armco"). Plaintiff sought to enjoin possible
5 transactions between the third parties and the debtors.

6 On November 25, 2014, Metamining and Chen filed and properly
7 served a motion to dismiss all of Plaintiff's claims against them;
8 the hearing on their motion is set for January 16, 2015. On
9 December 8, 2014, Armco filed and properly served its motion to
10 dismiss the claims against it; Armco's motion is also set for
11 hearing on January 16, 2015. Pursuant to B.L.R. 7007-1(b), the
12 deadline for filing opposition(s) to these motions to dismiss was
13 January 2, 2015. As of January 8, 2015, no opposition has been
14 filed to either motion.

15 The court has reviewed the motions to dismiss, and finds them
16 both well-taken. First, the claims against Armco have been
17 rendered moot by the bankruptcy filing. Plaintiff sought to
18 enjoin a stock exchange between Draco and Armco. No such transfer
19 occurred prior to the petition date and still has not occurred.
20 At this juncture, Metawise (as the holder of 100% of the stock of
21 Draco) will have to obtain court approval of a sale or transfer of
22 its ownership interests in Draco, or at least give creditors and
23 others parties in interest of its intent to do so, either through
24 a plan or a motion under 11 U.S.C. § 363. As any such stock
25 transfer is thus subject to this court's review, the request for
26 an injunction and for declaratory relief as to Armco is moot.
27 Thus, the court will grant Armco's motion to dismiss.

28 Moreover, Plaintiff sought a declaratory judgment that it "is

1 the proper party to own and hold the 2% common stock in Metamining
2 and all of the shares in Draco that were previously owned by
3 Metawise, requiring Metawise to immediately turn over the 2%
4 common stock in Metamining and all of the shares in Draco to SWS."
5 The automatic stay precludes further prosecution of this claim for
6 relief, as Schedule B, Item 13 reflect that Metawise owns 100% of
7 Draco's stock and a 2% equity interest in Metamining, Inc.

8 Finally, Plaintiff lacks standing to prosecute its fraudulent
9 transfer claims against Mr. Chen and Metamining (and others), as
10 those claims are property of the bankruptcy estate, and must be
11 prosecuted by an estate representative (usually a trustee,
12 debtor-in-possession, or a creditors' committee) or by a party
13 authorized by the court to pursue such relief.

14 For the foregoing reasons and in the absence of any timely
15 opposition, the court will grant both motions to dismiss and will
16 take the January 16 hearings off calendar. Counsel for each
17 movant should prepare and upload orders granting their respective
18 motion for the reasons stated in this memorandum decision.
19 Counsel should serve the proposed orders on Plaintiff's counsel
20 and file a separate certificate of such service.

21 *** END OF MEMORANDUM DECISION ***
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